

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2019

C O R A M

THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD) No.4443 of 2014 &
M.P.No.1 of 2014

Kaiser Jabeen ... Petitioner

Vs.

Rahima Bee ... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the order and decretal order dated 19.06.2014 in I.A.No.172 of 2011 in O.S.No.1 of 2010 passed by the Subordinate Judge, Vaniyambadi Taluk, Vellore District.

For Petitioner Mr.Asif Ali

For Respondent ... Mr.N.A.Nissar Ahmed

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ORDER

The Civil Revision Petition has been filed challenging the order dated 19.06.2014 passed by the learned Subordinate Judge, Vaniyambadi Taluk, Vellore District in I.A.No.172 of 2011 in O.S.No.1 of 2010.

Brief facts leading to the filing of the instant revision under Section 115 of the Code of Civil Procedure:

2. The petitioner is the defendant in the suit O.S.No.1 of 2010 filed by the respondent before the Sub Court, Vaniyambadi, Vellore. The said suit was filed for specific performance of an agreement of sale dated 26.02.2007 entered into by the petitioner with the respondent. Under the agreement of sale, the petitioner has agreed to sell the suit schedule property to the respondent. Since the petitioner did not execute the sale deed as per the agreement of sale, the respondent filed the suit O.S.No.1 of 2010. The petitioner remained ex parte in the suit and an ex parte decree dated 16.02.2010 came to be passed in favour of the respondent against the petitioner.

3. E.P.No.31 of 2010 was filed by the respondent before the Sub Court, Vaniyambadi, Vellore to execute the ex parte decree dated 16.02.2010 passed in O.S.No.1 of 2010. After filing of the execution petition, the petitioner who is the defendant in the suit filed I.A.No.172 of 2011 in O.S. No.1 of 2010 seeking to condone the delay of 511 days in filing an application to set aside the ex parte decree dated 16.02.2010.

4. According to the petitioner, as seen from the affidavit filed in support of I.A.No.172 of 2011, she came to know about the ex parte decree dated 16.02.2010 only on 20.07.2011, when the respondent/plaintiff informed her that the suit schedule property is under encumbrance and that, she will take possession of the property from the petitioner. It is the case of the petitioner that she never executed any agreement of sale, but has only received the loan of Rs.1,00,000/- from the respondent on 26.02.2007 and had executed the alleged document only as a security for the said loan. It is her case that immediately after coming to know about the ex parte decree, she has approached her advocate and has filed an application in I.A.No.172 of

2011 seeking to condone the delay of 511 days in filing an application to set aside the ex parte decree. It is also her case that she is an illiterate person and hence, she was not aware of the legal proceedings initiated by the respondent which culminated in the ex parte decree dated 16.02.2010.

5. A counter affidavit was also filed by the respondent/plaintiff in I.A.No.172 of 2011 denying the allegations made in the affidavit filed in support of I.A.No.172 of 2011. According to her, the agreement of sale is a registered agreement and she has denied the allegations made by the petitioner that only as a security for the loan of Rs.1,00,000/- availed by the petitioner, a document was registered in favour of the respondent by the petitioner. According to her, the suit summons was duly served on the petitioner and the petitioner has wantonly remained ex parte in the suit which resulted in the ex parte decree dated 16.02.2010 against her. It is also stated in the counter affidavit that the balance sale consideration of Rs.2,00,000/- has been paid by the respondent as directed by the Trial Court. Subsequent to the payment of entire sale

consideration in the execution petition filed by the respondent in E.P.No.31 of 2010, it is also stated in the counter affidavit that a sale deed has already been executed in favour of the respondent for the suit schedule property by the executing court. In I.A.No.172 of 2011, the oral and documentary evidence was let in by both the parties.

6. By order dated 19.06.2014, I.A.No.172 of 2011 filed by the petitioner to condone the delay of 511 days in filing an application to set aside the ex parte decree dated 16.02.2010 was dismissed by the Trial Court. Aggrieved by the dismissal of I.A.No.172 of 2011, the instant Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure.

7. Heard, Mr.Asif Ali, learned counsel for the petitioner and Mr.N.A.Nissar Ahmed, learned counsel for the respondent.

Discussion:

8. The reasons given by the petitioner in the application I.A.No.172 of 2011 in O.S.No.1 of 2010 filed to condone the delay of 511

days in filing an application to set aside the ex parte decree is that she was informed about the ex parte decree only on 20.07.2011 by the respondent/plaintiff that the suit schedule property is under encumbrance and that, the respondent will take possession of the property. It is her case that the document was executed in favour of the respondent only as a security for the loan of Rs.1,00,000/- allegedly availed by the petitioner from the respondent on 26.02.2007. As seen from the affidavit filed in support of I.A.No.172 of 2011, there is no explanation given as to whether the petitioner has repaid the said loan to the respondent or whether any steps have been taken by the petitioner to repay the said loan to the respondent.

9. This Court has also perused the oral evidence placed on record in I.A.No.172 of 2011. As seen from the cross examination of the petitioner by the respondent, the petitioner has admitted that it was her signature in the suit summons namely Ex.P2. She has also admitted that she came to know about the pendency of the suit six months back from the date of cross examination through her sister's husband. However, in

the affidavit filed in support of I.A.No.172 of 2011, she has stated that she came to know about the suit only on 20.07.2011, that too, only from the respondent/plaintiff. The petitioner has been making contradiction statements in the counter affidavit filed in support of I.A.No.172 of 2011 and during the cross examination by the respondent in I.A.No.172 of 2011.

10. All the above mentioned factors clearly prove that the petitioner has not defended the suit, despite the receipt of the summons in O.S.No.1 of 2010. The suit was filed by the respondent in the year 2010. After service of summons on the petitioner, the suit came to be decreed ex parte on 16.02.2010 as the petitioner failed to defend the suit by entering appearance in the suit. The execution petition was filed by the respondent on 02.06.2010 and a sale deed was also executed by the executing court in favour of the petitioner on 08.12.2010 and symbolic possession was also taken by the respondent under Order XXI Rule 34 CPC on 28.02.2011. Only after the Execution petition was terminated on 28.02.2011, the petitioner has filed an application

I.A.No.172 of 2011 seeking to condone the delay of 511 days in filing an application to set aside the ex parte decree dated 16.02.2010.

11. This Court has perused the impugned order. The Trial Court has observed that the petitioner has admitted the receipt of suit summons Ex.P2. The Trial Court has also observed that even though the petitioner has claimed that her signature has been forged in the suit summons, she has admitted that the signature found in the suit summons is her signature during her cross examination by the respondent. The Trial Court has also recorded the deposition made by the petitioner that she came to know about the ex parte decree only through her sister's husband Parvesh, 6 to 7 months before the date of the execution which contradicts her statement made in the affidavit filed in support of I.A.No.172 of 2011 wherein she stated that she came to know about the ex parte decree only from the respondent/plaintiff on 20.07.2011.

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12. For the foregoing reasons, this Court is of the considered view that the Trial Court has rightly dismissed the application I.A.No.172

of 2011 as the petitioner has been taking different stands and has not approached the court with clean hands. As observed by this Court, no explanation has been given by the petitioner regarding repayment of the alleged loan and steps taken by the petitioner for the repayment of the said loan to the respondent.

Conclusion:

13. This Court does not find any merit in this revision. Accordingly, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet: Yes/No

Speaking/Non-Speaking orders

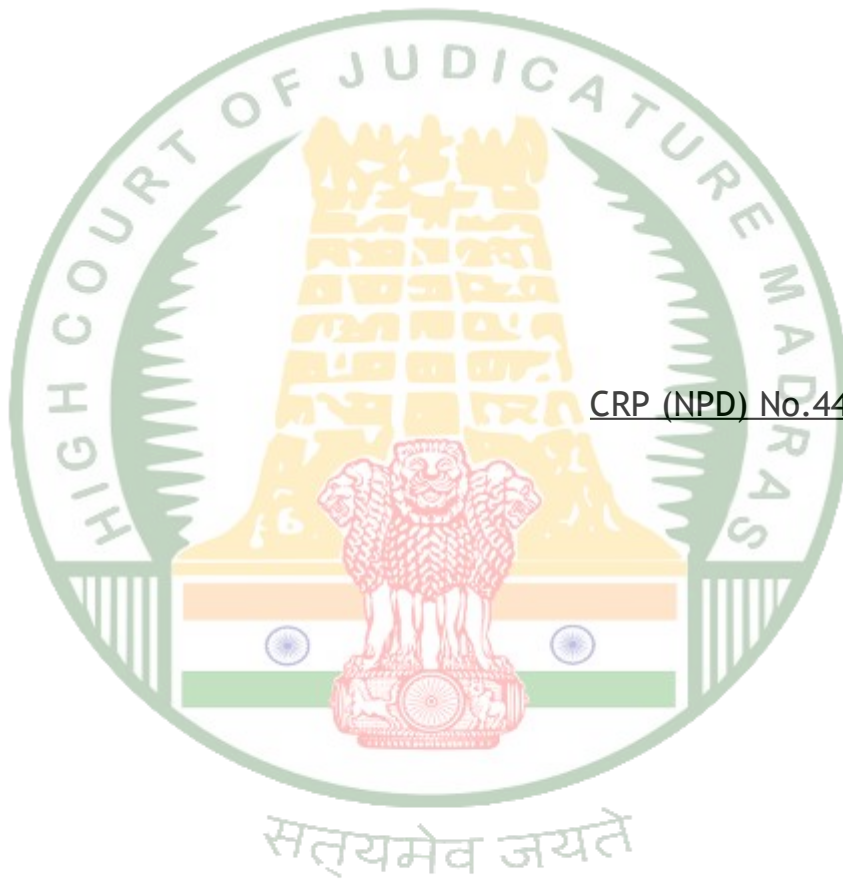
To

The Subordinate Judge, Vaniyambadi Taluk, Vellore District.

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ABDUL QUDDHOSE. J,

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